

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

HOUSING AND PROPERTY SCRUTINY COMMITTEE

13 JULY 2016

LIVE ISSUES REPORT BY THE DIRECTOR OF HOUSING

The purpose of this report is to inform Members of recent policy and practice developments, which are likely to impact on the future work of the Business Group and to update Members on progress of current projects.

FOR INFORMATION

1. Adair and Hazlewood Towers: Update on works to comply with the Enforcement Notices

- 1.1 On the 31st October 2015 a fire broke out within a flat on the third floor of Adair Tower.
- 1.2 The fire was investigated by the LFB and by the Police and is considered to have been non- accidental (arson). The Police arrested the alleged perpetrators and charges are expected to be brought against these individuals. Investigations are ongoing.
- 1.3 Following the LFB's investigation and post-fire audit of Adair Tower and their subsequent audit of its sister block Hazlewood Tower (which is identical in design and construction) the TMO/Council was served with two Enforcement Notices – one relating to each block. The key matters raised in the Enforcement Notices relate to the installation of self-closing devices on all flat entrance doors and the requirement to review the protection to each communal staircase and ventilation to the lift lobbies to ensure that both staircases are not affected by smoke and are available for use by residents and attending fire crews. (The original design of both blocks featured two staircases - one fully enclosed and protected means of escape staircase and the second an "accommodation staircase" which was open to the lift lobbies. The accommodation staircase had allowed smoke from the fire floor to reach other floors in the building and the LFB require this to be investigated.)
- 1.4 The TMO and RBKC agreed to ensure that all flat entrance doors in both blocks are sufficiently fire-rated and fitted with self-closing devices. Contractors are currently on site, initially inspecting and assessing each flat door to clarify what works are required and

subsequently undertaking all necessary works to either upgrade or replace the flat entrance door. Inspections have been completed on the majority of the doors with further attempts to obtain access to the remaining flats ongoing. An access procedure has been adopted and in cases where access is persistently withheld residents will be referred to legal services who will pursue access via legal means. Contractors have also commenced the necessary remedial work / door replacement.

- 1.5 In order to clarify the LFB's requirements in relation to ventilation and protection within lift lobbies and staircases as set out in the Enforcement Notices, the TMO engaged the services of specialist fire engineering consultancy, Exova, to undertake investigations and make recommendations for any necessary remedial action. Exova have produced a draft specification for the recommended works to address the ventilation and protection issues and are due to be implemented.
- 1.6 The contractor undertaking the works to upgrade / replace the flat entrance doors has also been appointed to undertake the works to address the LFB's ventilation concerns by installing fire-rated screens to fully enclose the lift lobbies and separate them from the accommodation staircase. Both programmes of work are currently on target to be completed by early August 2016.
- 1.7 The LFB have been updated on the TMO's progress with meeting the requirements of the Enforcement Notices at the regular (bi-monthly) TMO / LFB Liaison meetings. Further the LFB have been provided with a copy of the recommendations from the Exova report and asked to confirm their approval for the works to proceed.
- 1.8 The LFB have agreed a three month extension on both Enforcement Notices requested by the TMO as the original contractor engaged to complete the work went in to liquidation part way through the inspection process. All works are on target to be completed within the extended period.

2. Homeless prevention legislation: A potential change in statutory homelessness duties

- 2.1 Existing homelessness legislation requires local authorities to provide advice and assistance to households (and vulnerable individuals) who are homeless or threatened with homelessness within 28 days. Local authorities have a duty to provide suitable temporary accommodation when households become homeless, and ordinarily discharge that duty with an offer of social housing or suitable private rented accommodation.

- 2.2 The Housing (Wales) Act 2014 changed the focus of the advice and assistance to homeless households to the prevention of homelessness. Central Government has expressed an interest in implementing similar legislation in England. The homelessness charity Crisis has lobbied for homeless prevention legislation to be implemented by Private Member's Bill: such a procedure stands a reasonable chance of success, given the support of the DCLG.
- 2.3 While RBKC does not oppose a move towards the prevention of homeless, it believes new legislation will require very careful consideration. The Council is very well positioned to contribute to the current discussions being a signatory to the recent report '*The homelessness legislation: and independent review of the legal duties owed to homeless people*'; published by Crisis (the only London borough to be represented on the panel).
- 2.4 A new statutory duty to prevent homelessness will not work unless it addresses the following:
- The *causes* of homelessness must be addressed in order for prevention to work. The reasons why households are threatened with homelessness may be the very same barriers faced by local authorities when trying to prevent homelessness; eg high rents and the ending of assured shorthold tenancies.
 - We must be free to help homeless households find stable, *affordable* homes that will not be rely on welfare benefits (such as Discretionary Housing Payment) to be sustainable. Such properties are likely to be away of central London.
 - We must be free to tailor services to local housing need. A 'one size fits all' approach will not work in London, and is contrary to the spirit of Localism.
 - The link between a homeless application and the allocation of social housing cannot be sustained, and households should have a duty to cooperate with efforts to alleviate their homelessness.
 - We will require significant additional resourcing in order to pursue successful and sustainable prevention and relief strategies.
- 2.5 The Cabinet Member for Housing & Property will be contacting the chair of the All Party Group on Homelessness and the MP's who are

proposing the private members bill to express the Council's views and to invite further discussion on homelessness prevention.

3. Proposed capping of residents aged under 35 in supported accommodation

- 3.1 In the November 2015 Spending Review, the Government announced that Housing Benefit claimed by social housing tenants will be capped to Local Housing Allowance levels. This measure means that single people under 35 without children will be restricted to the LHA shared room rate. The cap comes into effect from April 2018 but will apply to all new social housing tenants from April 2016.
- 3.2 The Government has agreed to delay the implementation of the cap by one year (ie tenancies starting April 2017) while further impact analysis is undertaken.
- 3.3 The Housing Department has analysed the impact of the forthcoming cap on its commissioned supporting housing services. This analysis has confirmed that landlords and providers will suffer losses on rents and services charges on 70% of commissioned contracts. 68% of socially excluded (rough sleeper) properties, 100% of young persons properties, and 100% of domestic abuse family properties would be adversely affected. The total shortfall in rent and service charges for the 594 supporting housing units subject to the cap will be £1.5 million.
- 3.4 The Department holds the view that alternative provisions, such as the placement of supported housing clients in temporary accommodation or a fundamental re-commissioning of supported housing services (a measure that has already saved over £2 million in the last five years) are not feasible.
- 3.5 The Housing Department has contacted the DCLG to express its concerns and welcomes further discussion with Government officials on this proposal.

4. Amendments to the Council's Allocation Scheme

- 4.1 We will be bringing forward amendments to the Allocation Scheme to reflect statutory regulations governing the allocation of social housing introduced after the Scheme's application; secondly, to implement minor changes of policy to improve the prioritisation for and allocation of accommodation, and to address a number of adverse effects identified within the 2014 Allocation Scheme once it

was in operation; and thirdly, to clarify the original intent behind certain provisions within the Scheme.

- 4.2 One significant proposal is the introduction of 'homeless prevention points'. The proposal will recommend that homeless prevention points are awarded to a homeless household (or individual) who agrees to move to a private sector tenancy, where otherwise the Council would provide temporary accommodation and accept a full housing duty. Households awarded these points will be in a position to bid for vacant social housing advertised on the Council's choice-based lettings scheme. The aim of this proposal is to reduce the numbers of households being placed in temporary accommodation, and the associated costs of doing so, while possibly providing homeless households with more choice as to where they are accommodated. Officers are currently modelling how this proposal may work in practice.

5. Vida Poshteh V Royal Borough of Kensington & Chelsea

- 5.1 The Supreme Court have granted Ms Poshteh permission to appeal the Council's decision to discharge the main housing duty following her rejection of a final offer of social housing. The appeal has been listed for 14 February 2017. The grounds of appeal together give rise to the following issues:
- a. in housing appeals generally, the intensity of scrutiny by the courts into the wording of review decisions; and
 - b. in suitability cases, the manner and extent of the balancing of the personal characteristics of an applicant against often acute shortage of housing.
- 5.2 To put this into context, Ms Poshteh refused an offer of housing association accommodation on the Notting Hill side of Shepherds Bush, in a first floor flat in a 1980s end-of-terrace street property which, viewed objectively, could be considered a generous, fortuitous and relatively rare opportunity. She suffers, however, from post-traumatic stress disorder, panic attacks, anxiety and depression, linked to experience of torture during imprisonment in Iran. One reason given for her refusal was that she experienced a "panic attack" on viewing the property because the circular shape of a large window about 3 feet across was said to have reminded her of small round prison windows. No medical evidence to support that particular contention was, however, produced on her behalf.

- 5.3 Ground 1 is a major legal and constitutional issue for the Supreme Court. It was only 6 years ago, in the *Birmingham* case, that the Supreme Court reached the decision that art 6 did not in fact apply to s204 housing appeals, because Pt 7 did not create any “civil” rights in the art 6 sense. The ECtHR has recently reached the opposite conclusion in the *Ali* case, which was the continuation in Strasbourg of the *Birmingham* case. The issue is highly topical, ie National judges following the rulings of foreign courts. If the Supreme Court should decide to follow the ECtHR and hold that art 6 does apply to s204 appeals, it opens the door to the further question whether this strengthens the argument for a more intense level of scrutiny in general on s204 housing appeals than has previously been held to be the case (which was the main thrust of the Appellant’s application for permission to appeal).
- 5.4 Ultimately, this raises a very important issue about resources. The closer the level of judicial scrutiny, the greater the costs and resources: the longer it will take to reach decisions because inquiries may need to be more extensive and the greater the amount of care and time which review officers may need to give each case; in turn, the greater the strain on budgets and availability of temporary accommodation pending review; and the greater the likelihood of s204s and s204As being launched and having to be considered and defended; and the greater the litigation risk in costs.
- 5.5 Ground 2 raises the issue whether the correct test was applied, which is likely to turn on how closely the review decision is read. If the Supreme Court re-affirms current practice of applying a ‘benevolent’ approach to review decisions the prospects of success, according to legal counsel, are significantly higher. Overall, legal counsel is confident that we have a strong case and reasonable chance of success on this appeal.

FOR INFORMATION

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Background Papers used in the Preparation of this Report:

None

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